

**THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

The Knit With, a Pennsylvania Partnership,

Plaintiff,

vs.

Knitting Fever, Inc., a New York corporation,

Designer Yarns, Ltd., a corporation of England,

Filatura Pettinata V.V.G. Di Stefano Vaccari & C.

(S.A.S.), a company of Italy,

Sion Elalouf and Diane Elalouf, of New York,

Jeffrey J. Denecke, Jr., of New York,

Jay Opperman, of New Jersey,

Debbie Bliss, of England,

Defendants.

Civil Action

No. 02: 08 - CV - 04221

Consolidated Case

STATEMENT OF COUNSEL

PLEASE TAKE NOTICE : Attached hereto for filing of record is a true and correct copy the Court's correspondence (in the nature of an Order) dated 29 November, 2012 granting Defendants Knitting Fever, Inc., Filatura Pettinata V.V.G. di Stefano Vaccari & C. (S.A.S.), Eisaku Noro & Co., Ltd., Sion Elalouf and Jay Opperman permission to petition to assess fees and costs against Plaintiff, The Knit With, correspondence dated 28 November, 2012 of Defendants' counsel requesting that permission and correspondence dated 27 November, 2012 of counsel directed to the same subject.

Respectfully Submitted,

LAW OFFICE OF JAMES F. CASALE

BY:


James F. Casale, Esquire

PA Attorney ID: 83373

8226 Germantown Avenue

CHESTNUT HILL, PA 19118-3402

215 - 247 - 4726

JFCasaleEsq@msn.com

Counsel for Plaintiff, The Knit With

DATED : 3 December, 2012

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF PENNSYLVANIA

CHAMBERS OF
RONALD L. BUCKWALTER
JUDGE

14614 UNITED STATES COURTHOUSE
601 MARKET STREET
PHILADELPHIA, PA 19106

(215) 597-3084

November 29, 2012

VIA EMAIL

Joanna J. Cline, Esquire
clinej@pepperlaw.com

Re: The Knit With v. Knitting Fever, et al
Civil Action No. 08-4221 / 08-4775

Dear Ms. Cline:

Continuing the litigation of this case by filing yet another motion is a subject to which, I hope, you would give serious consideration before incurring even more fees in what many times can become a rather lengthy proceeding itself. If you are determined to proceed with the § 1927 motion, please style it as “Petition for leave of court to file 28 U.S.C. § 1927 motion and motion for excessive costs pursuant to 28 U.S.C. § 1927.”

Very truly yours,

s/ Ronald L. Buckwalter

Ronald L. Buckwalter

RLB/sl

cc: James F. Casale, Esquire
JFCasaleEsq@msn.com

3000 Two Logan Square
Eighteenth and Arch Streets
Philadelphia, PA 19103-2799
215.981.4000
Fax 215.981.4750

Joanna J. Cline
direct dial: (215) 981-4520
clinej@pepperlaw.com

November 28, 2012

Via Email

Honorable Ronald L. Buckwalter
United States District Court for the Eastern
District of Pennsylvania
U.S. Courthouse
601 Market Street, Room 14614
Philadelphia, PA 19106-1755

Re: The Knit With v. Knitting Fever, Inc. et al. and
The Knit With v. Eisaku Noro & Co., Ltd., et al.
Civil Action Nos. 08-cv-4221 and 08-cv-4775 (consolidated)

Dear Judge Buckwalter:

We are in receipt of Mr. Casale's letter of November 21. We take issue with Mr. Casale's characterizations and allegations, but we decline to address them because in addition to being meritless, they now are moot.

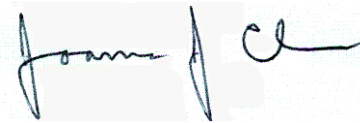
The parties have stipulated to the withdrawal, with prejudice, of KFI's counterclaims. Attached is a Rule 41 stipulation executed by counsel for the parties, which we plan to file with the Clerk today.

Given that the entry of dismissal will conclude proceedings in this Court, Defendants respectfully request leave to file a motion under 28 U.S.C. § 1927. *See* Dkt. No. 378 at 3 (instructing the parties not to file any additional motions without leave of Court); Dkt. No. 421 (denying prior request to file a § 1927 motion "without prejudice to re-filing at the

Hon. Ronald Buckwalter
Page 2
November 28, 2012

conclusion of proceedings in this Court”). We anticipate being able to file such a motion by December 14.

Respectfully,

A handwritten signature in blue ink, appearing to read "Joanna J. Cline", is written over a light gray rectangular background.

Joanna J. Cline

Attachment
JJC/ct

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

THE KNIT WITH,

Plaintiff,

v.

KNITTING FEVER, INC., et al.,

Defendants.

Civil Action No. 08-cv-04221

THE KNIT WITH,

Plaintiff,

v.

EISAKU NORO & CO., LTD., et al.,

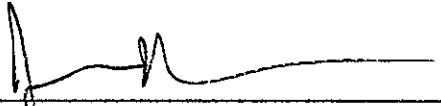
Defendants.

Civil Action No. 08-cv-04775


**STIPULATED DISMISSAL WITH PREJUDICE PURSUANT TO FEDERAL RULE OF
CIVIL PROCEDURE 41(A)(1)(A)(II)**

Pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii), all parties who have appeared hereby stipulate to the dismissal, with prejudice, of all Counterclaims asserted by Knitting Fever, Inc. against The Knit With. Each party retains the right to seek fees and costs in connection with this Action.

Respectfully submitted,


Joshua R. Slavitt, Esq.
Joanna J. Cline, Esq.
Noah S. Robbins, Esq.
PEPPER HAMILTON LLP
3000 Two Logan Square
Eighteenth and Arch Streets
Philadelphia, PA 19103-2799
Telephone: 215.981.4000 / Fax: 215.981.4750
slavittj@pepperlaw.com
clinej@pepperlaw.com

Respectfully submitted,


James F. Casale, Esq.
Law Office of James F. Casale
8226 Germantown Avenue
Philadelphia, PA 19118

Attorney for Plaintiff and Counter-
defendant The Knit With

robbinsn@pepperlaw.com

Attorneys for Defendant and Counter-plaintiff
Knitting Fever, Inc. and Defendants Designer
Yarns, Ltd., Filatura Pettinata V.V.G. Di
Stefano Vaccari & C. (S.A.S.), Sion Elalouf,
Diane Elalouf, Jeffrey Denecke, Jay
Opperman, and Debbie Bliss

SO ORDERED:

The Hon. Ronald L. Buckwalter, S.J.

James F. Casale, Esq.

From : James Casale <JFCasaleEsq@msn.com>
Date : Tuesday, November 27, 2012 5:12 PM
To : Cline, Joanna J. <CLINEJ@pepperlaw.com>
Cc : Slavitt, Joshua R. <slavittj@pepperlaw.com>; Robbins, Noah S. <robbinsn@pepperlaw.com>; Webb, Dean <DBWebbEsq@gmail.com>
Subject : Re: The Knit With v. Knitting Fever
Attachments :

Ms. Cline,

The position that KFI's willingness to dismiss its counterclaims "is *entirely separate* from the interest of all the KFI parties to motion for fees and costs" indicates sentence two of the proposed stipulation is, indeed, superfluous or excess verbiage to KFI's dismissal with prejudice of its counterclaims. My exposure to a Rule 41 stipulation excludes addressing other matters in the stipulation.

Apparently, the stipulation (which you confirm *varies materially* from your representation that its purpose is as originally proposed -- to effect only dismissal of the KFI counterclaims) is *a take-it or leave-it* proposition.

A simple stipulation of dismissal with prejudice accomplishes both the Rule 41 function (and perhaps the Court's desire) and the immediate purpose and (now known) intent of KFI. Complicating the dismissal with excess verbiage hardly fulfills either.

As to any of the KFI parties (as previously defined in this action) petitioning for fees and costs, whatever petition is contemplated or may be brought is now confirmed to be wholly independent of KFI's withdrawal with prejudice of its counterclaims. The merits of such a petition do not depend upon a reservation of rights in a Rule 41 stipulation. Indeed, Rule 41 does not provide for a motion for fees and costs -- which must be brought pursuant to another Rule or statute. Should the KFI parties act upon an intent to petition for fees and costs, either such a petition will have merit or it will not and The Knit With will be constrained to respond accordingly.

Conversely, if KFI wishes to proceed with a motion for dismissal in lieu of a stipulation that is their choice. Again, The Knit With will be constrained to respond accordingly.

J.F. Casale, Esquire
8226 Germantown Avenue
CHESTNUT HILL, PA 19118-3402
215-247-4726

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----- Original Message -----

From: [Cline, Joanna J.](#)
To: ['James Casale'](#)
Cc: [Slavitt, Joshua R.](#) ; [Robbins, Noah S.](#) ; [Webb, Dean](#)
Sent: Tuesday, November 27, 2012 3:55 PM
Subject: RE: The Knit With v. Knitting Fever

KFI's willingness to dismiss its counterclaims with prejudice is entirely separate from the interests of all of the KFI Defendants, including KFI, in proceeding with requests for fees and costs in connection with this action. Given that you do not agree to our proposed stipulation, we will file a motion for voluntary dismissal with the Court.

Joanna J. Cline
Attorney at Law
Pepper Hamilton LLP
3000 Two Logan Square
Eighteenth and Arch Streets
Philadelphia, PA 19103-2799
215.981.4520 - Direct
215.981.4750 - Fax
clinej@pepperlaw.com
www.pepperlaw.com

From: James Casale [mailto:JFCasaleEsq@msn.com]
Sent: Tuesday, November 27, 2012 3:09 PM
To: Cline, Joanna J.
Cc: Slavitt, Joshua R.; Robbins, Noah S.; Webb, Dean
Subject: Re: The Knit With v. Knitting Fever

Ms. Cline,

The proposed stipulation includes a reservation of limited rights -- which appears contrary to the representation the stipulation seeks dismissal with prejudice.

Excising sentence two -- whereby the document conforms to the representation -- is acceptable.

J.F. Casale, Esquire
8226 Germantown Avenue
CHESTNUT HILL, PA 19118-3402
215-247-4726

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----- Original Message -----

From: [Cline, Joanna J.](#)
To: ['James Casale'](#)
Cc: [Slavitt, Joshua R.](#) ; [Robbins, Noah S.](#) ; [Webb, Dean](#)
Sent: Tuesday, November 27, 2012 1:46 PM
Subject: RE: The Knit With v. Knitting Fever

Counsel,

Our intent is as I stated it-- to seek a stipulated dismissal of KFI's counterclaims. We did not suggest a general release and expect each party to retain its right to seek fees/costs.

Attached is a proposed stip. If you agree to the stip, please execute and return it. If you don't, please let us know so that we can file a motion under Rule 41.

Joanna J. Cline
Attorney at Law
Pepper Hamilton LLP
3000 Two Logan Square
Eighteenth and Arch Streets

Philadelphia, PA 19103-2799

215.981.4520 - Direct

215.981.4750 - Fax

clinej@pepperlaw.com

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From: James Casale [<mailto:JFCasaleEsq@msn.com>]

Sent: Tuesday, November 27, 2012 11:26 AM

To: Cline, Joanna J.

Cc: Slavitt, Joshua R.; Robbins, Noah S.; Webb, Dean

Subject: Re: The Knit With v. Knitting Fever

Ms. Cline,

Your correspondence of late afternoon Monday has been reviewed. Other commitments of both yesterday and this morning prevented an earlier response.

Understood is KFI intends to file a Rule 41 motion of withdrawal should a stipulation of withdrawal with prejudice not be agreed upon by Noon today.

The present intent of KFI is not entirely clear and the short time to effect a stipulation it is wholly unclear. If KFI's stated intent is what it is now purported to be -- the unequivocal withdrawal with prejudice of all KFI claims and understood to extend to claims asserted or capable of being asserted against The Knit With, its principals, partners, directors, officers, employees, agents, assigns, successors and heirs -- the Defendant to the KFI claims certainly can enter into such a stipulation to actualize what is understood may be the KFI intent. Such a development may please the Courts.

However, since KFI is prepared to proceed absent such a stipulation, it is wholly unclear KFI intends to unequivocally withdraw with prejudice and preclusive effect the claims asserted against The Knit With.

Apparently, KFI has considered the effect of a stipulated withdrawal with prejudice and KFI's intent has been reduced to some form of a writing. I respectfully suggest receipt of draft language would facilitate a determination of KFI's actual intent. This litigation has a history where your junior Partner has retracted from your efforts that reason have a role in client advocacy. No quibble is intended (and hopefully none is taken) to clarification of what may or may not be KFI's true intent and to which agreement is requested.

Please clarify the proposed stipulation:

1. does not intend to reprise in any way the terms your junior Partner (lead defense counsel) placed before the Court in writing on 19 October and orally on 24 September or any other terms suggesting equivocation on the preclusive effect of a withdrawal with prejudice;
2. will unequivocally state KFI together with its officers, directors, shareholders, employees, agents, assigns, successors and heirs voluntarily withdraws with absolute prejudice and with the effect of an adjudication on the merits all counterclaims either asserted or capable of being asserted against The Knit With, its partners, principals, directors, officers, employees, agents, assigns, successors and heirs.

I recognize on 24 September the Court signaled it would grant KFI no less than unequivocal withdrawal with prejudice.

Please be assured that upon receipt of a draft stipulation, I will interrupt pending activities to review and obtain/provide any necessary comments.

As to the other multiple points of the second paragraph to your message, please know the documents I understand to be the CCMI round trial results and which defense counsel states were produced last Wednesday, 21 November -- but did not enclose with the electronic transmission of your letter -- were not received in yesterday's delivery of Postal Service mail. Indeed, receipt of today's mail did not include such documents.

As to the remaining points, your disagreement with the facts, and the positions taken, whether by apprehension or misapprehension, concerning each is noted. I anticipate we will each proceed accordingly.

Thank you for your attention.

J.F. Casale, Esquire
8226 Germantown Avenue
CHESTNUT HILL, PA 19118-3402
215-247-4726

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----- Original Message -----

From: [Cline, Joanna J.](#)

To: 'James Casale'

Cc: [Slavitt, Joshua R.](#) ; [Robbins, Noah S.](#) ; [Webb, Dean](#)

Sent: Monday, November 26, 2012 3:32 PM

Subject: The Knit With v. Knitting Fever

Mr. Casale,

We write to inquire whether, pursuant to Rule 41, you would stipulate to KFI's voluntary dismissal of its counterclaims with prejudice. If you agree by noon tomorrow, we will prepare a draft stipulation for your review. If you do not agree, we will file a motion under Rule 41.

Separately, we are in receipt of your letter to Judge Buckwalter dated last Wednesday. Although your request to re-open to discovery will be moot assuming you stipulate to dismiss our counterclaims, we intend to respond to your November 21 letter to correct your mis-statements. The documents that we produced on Wednesday are Mr. Langley's; they are not documents we received from CCMI. You either already have them or could have asked your own expert for a copy, but we produced them to you to make sure you were aware of their existence and, ironically, to avoid any unfounded accusations of impropriety.

Joanna J. Cline
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**THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

The Knit With, a Pennsylvania Partnership,

Plaintiff,

vs.

Knitting Fever, Inc., a New York corporation,

Designer Yarns, Ltd., a corporation of England,

Filatura Pettinata V.V.G. Di Stefano Vaccari & C.

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Jay Opperman, of New Jersey,

Debbie Bliss, of England,

Defendants.

Civil Action

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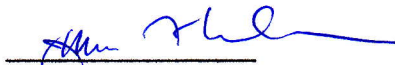
CERTIFICATE OF SERVICE

I, James F. Casale, Esquire, attorney for Plaintiff and Counterclaim Defendant The Knit With, hereby certify that, on the date set forth below, I caused to be filed of record with the U.S. District Court for the Eastern District of Pennsylvania, correspondence of the Court dated 29 November, 2012 granting permission to Defendants Knitting Fever, Inc., Filatura Pettinata V.V.G. di Stefano Vaccari & C. (S.A.S.), Eisaku Noro & Co., Ltd., Sion Elalouf and Jay Opperman to petition for fees and costs pursuant to 28 U.S.C. § 1927 and served the same to Defendants' counsel by electronic filing with the Court.

Respectfully Submitted,

LAW OFFICE OF JAMES F. CASALE

By:


James F. Casale, Esquire
PA Attorney ID: 83373
8226 Germantown Avenue
CHESTNUT HILL, PA 19118-3402
215 - 247 - 4726
JFCasaleEsq@msn.com

DATED : 3 December, 2012

Counsel for The Knit With